IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8305 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

R J PARIKH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8305 of 1989

MR MURLI DEVNANI FOR MR YOGESH S LAKHANI for Petitioner

MR UA TRIVEDI, AGP, for Respondent No. 1

MR AS PANDYA for Respondent No. 2, 3

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 28/04/2000

ORAL JUDGEMENT

By this petition under Article 226 of the Constitution of India, the petitioner has sought order of this Court directing the respondent authorities to determine the

pension of the petitioner on the basis of the length of service of the petitioner according to the pension rules made by the respondent No.1 and further to direct them to regularly pay the same including the arrears from 1st March 1980, inter alia, contending that he is entitled to pension and his lawful claim is not accepted by the respondents.

The petitioner joined the services with the Government of Saurashtra on 1st July 1951 as Welfare Organiser. Upon reorganisation of the State of Saurashtra, he was allocated to the Government of Bombay and upon bifurcation of Bilingual of Bombay State, the petitioner was again allocated to the State of Gujarat. That is how, he claims to be a Government servant as Welfare Organiser till 31st March, 1964.

Upon creation of Gujarat Labour Welfare Board, the petitioner came to be transferred to the said Board with effect from 1st April, 1964. The Government of Gujarat by resolution No.G.W.1262/83800-I transferred the petitioner to the respondent No.2, whereas, the staff attached to the Centre was transferred to the Board with effect from 15th January, 1964. The petitioner has also contended that he was transferred to the Board by the aforesaid Government Resolution and his name continued in the Government, though he was transferred to the Board and the services of the petitioner was never terminated by respondent No.1 and he was merely transferred to respondent No.2 Board. In short, he has contended that he continued as a Government employee, and, therefore, he is entitled to pensionary benefits.

The respondent No.3 has filed affidavit in reply and has also filed additional affidavit in reply challenging the right of the petitioner to claim pensionary benefits. After having considered the facts and circumstances emerging from the record of the present case, following facts have emerged:

1. That the services of the petitioner were transferred permanently from 1.4.64 and, thus, the petitioner ceased to be a Government employee from 1.4.64.

2. He became the employee of the Board as the petitioner along with other staff members of the Government came to be absorbed in the Board.

3. There would not arise the question of continuance of the petitioner in emploment of the respondent

No.1, State of Gujarat, since upon his absorption on the establishment of the Board.

4. Respondent No.2 is an autonomous body and the conditions of service upon absorption on the establishment of the Board applicable to the employees of the Board will continue to apply to the petitioner under the provisions of the Bombay Welfare Fund Act, 1953 and the rules framed thereunder.

5. It is not established that the petitioner had written letter dated 13.6.88 to the Labour Minister about his continuance and claim as stated in the petition.

6. The Government resolution dated 15.1.64, copy whereof, is produced with the additional affidavit in reply, unequivocally, goes to show that the petitioner not only ceased to be an employee of the Government, but as per the resolution, pensionary liability was required to be liquidated upto the date of transfer and the liquidated amount of pension was required to be credited. Not only that, commuted value for the pension upto 31st March, 1964, calculated at Rs.3669.85 ps. and towards D.C.R.G. Rs.754.65 (total amount of Rs.4424.50) came to be credited in the account of the petitioner and the pensionary liability of the petitioner upto 31st March, 1964 was discharged as per the resolution of the Government. In support of this, the respondent authority has relied on a certified issued by the office of the Accountant General.

After given anxious thoughts to the aforesaid facts and circumstances, the petitioner has failed to establish that he is entitled to the pensionary benefits, as if he continued in the employment of the Government beyond 31st March, 1964. On the contrary, it is established by the respondent authority that the petitioner was paid the equivalent amount under the aforesaid resolution towards pensionary liability, at the relevant time. The petition is, therefore, without any substance and deserves to be rejected. Accordingly it is rejected. Rule discharged.

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(vjn)